

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Advanced Television Systems and) MB Docket No. 87-268
Their Impact upon the Existing)
Television Broadcast Service)

To: The Commission

Comments of Siete Grande Television, Inc.

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Executive Summary

Siete Grande Television, Inc. (“Siete Grande”) owns and operates Station WSTE-TV, Ponce, Puerto Rico. Siete Grande submits comments in this proceeding because the proposed allotment for Station WSTE-TV fails to achieve the Commission’s stated goal of its DTV transition, namely to replicate WSTE-TV’s existing analog coverage, and, in fact, will cause an egregious and unprecedented service loss to 2.5 million residents on the island of Puerto Rico. Since 1986 WSTE-TV has continuously served the entire island of Puerto Rico, overcoming the obstacles of Puerto Rico’s mountainous terrain by establishing a unique multi-site system of booster stations that synchronously operate with its Ponce transmitter to provide a single unitary signal over all of Puerto Rico. No other station in Puerto Rico or on the mainland operates in this manner. The Commission first granted an experimental license to WSTE-TV in 1986 and then a permanent license in 1992 to provide island wide service in this manner.

Over the past decade, Siete Grande has participated in one DTV proceeding after another seeking a channel allotment that will enable full DTV replication of WSTE-TV’s existing island wide analog coverage. In the Commission’s Seventh Report and Order the proposed final DTV table allots Siete Grande the channel it requested for permanent operations but the Commission has imposed operating parameters that effectively limit the station’s future DTV coverage area. The result will be a loss of service to over 80% of the island’s residents, who currently receive WSTE-TV’s signal off air.

Achieving full DTV replication of the existing coverage area is technically feasible. WSTE-TV's initial channel allotment on Channel 66 provided an island wide footprint. Just three days prior to the channel election deadline, the Commission granted a construction permit which allowed in-core DTV operations on Channel 8. Because of mountainous terrain and because the Commission did not permit the filing of booster operations to mirror the existing analog operations, the service area of the construction permit for Channel 8 was limited to the southern end of the island. In compiling the final DTV table, the Commission relied in large measure upon the Form 381 filings of licensees. The form presented four choices and could not be filed unless one of the four boxes was checked. In preparing its Form 381 submission, Siete Grande realized that none of the form's choices fit its truly unique operating characteristics and so it filed an Addendum wherein it reiterated the unique operations of WSTE-TV and WSTE-TV's goal of achieving island wide coverage through a DTS type of system. The Commission's staff itself acknowledged that the form's choices did not address Siete Grande's unique situation. The staff further acknowledged that the Addendum was not considered in specifying the operating parameters (height and power) which effectively restrict coverage on Siete Grande's allotted Channel 7. Thus, while Siete Grande received the ultimate DTV Channel (Channel 7) that it requested, the operating parameters specified in the table effectively preclude replication of existing analog coverage, creating the severe service loss Siete Grande explicitly sought to prevent.

By adopting the operating parameters for Channel 7 set forth on Attachment A hereto, the Commission can preserve full replication of existing service once a permanent DTS or booster type of system is established without creating interference to any other licensee or necessitating any other change to the proposed final DTV table. Plainly, the Commission has the equitable power under the public interest standard to prevent this egregious and unprecedented service loss to 2.5 million residents of Puerto Rico. The Commission can only protect that service by expeditious action to correct the operating parameters for Channel 7 in Ponce. Absent such action, the service loss will become inevitable.

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Siete Grande Television, Inc. ("Siete Grande"), by its attorneys, respectfully submits the following Comments in response to the Commission's Seventh Further Notice of Proposed Rulemaking relating to the proposed final table of Digital Television ("DTV") allotments.

I.

Introduction

1. The *Seventh Further Notice of Proposed Rulemaking* ("Seventh Notice") represents the "final step" in the Commission's channel selection process as the nation moves from analog television services to digital television services. The stated goal of this nearly decade long process has been "to enable stations to 'replicate' the service areas of their existing NTSC operations, i.e., to provide DTV

service to an area that is comparable to their existing NTSC service area.”

(Seventh Notice, par. 4.) For most licensees the proposed final DTV table attached to the Seventh Notice serves such a purpose. In the case of Siete Grande, licensee of Station WSTE-TV, Channel 7, Ponce, Puerto Rico, the Table falls woefully short of realizing this goal. The proposed DTV Table imposes operating limitations that severely curtail WSTE-TV’s service area and effectively creates a service loss to over 2.5 million Puerto Rican residents. Fortunately, to restore the full DTV replication of the existing analog coverage no change in channel assignments by any licensee is needed, no interference to any other licensee will be caused and no other licensee will be precluded from utilizing an in-core DTV channel. Instead, Siete Grande asks the Commission to specify new technical parameters for DTV operation that match WSTE-TV’s current analog parameters. Siete Grande’s proposed changes to the DTV Table are set out in Attachment A hereto. They can be adopted without adverse impact upon any other station serving Puerto Rico or elsewhere.

2. Siete Grande’s signal transmission is truly sui generis. Some twenty-one years ago, in order to overcome the obstacles of Puerto Rico’s well documented mountainous terrain, the Commission authorized WSTE-TV to deploy on an experimental basis a multi-site transmission system consisting of an auxiliary transmitter and three co-channel booster stations that operate synchronously to produce a single island-wide signal on its assigned Channel 7. Using the mountainous terrain to prevent self-interference over populated areas, WSTE-TV is able to provide analog coverage on a single channel across the entire island. This

unique transmission system was permanently licensed in 1992 and for the past two decades WSTE-TV has provided an uninterrupted independent television service to inhabitants island wide. Siete Grande's signal configuration is unique not only on the Island of Puerto Rico but on the mainland as well. Many of the same reasons for analog WSTE-TV being a special licensing case have likewise made full replication of Siete Grande's analog coverage in DTV an elusive goal. Siete Grande is technically able to provide island-wide DTV service. The DTV channel election process regimen, however, has created certain regulatory anomalies. It is these anomalies that the licensee requests the Commission address and remedy in this proceeding.

3. The curtailment in DTV service area flows from the DTV Channel Election Form. Throughout Siete Grande's nine year quest to achieve full island-wide replication of its analog signal it has found itself like a square peg in a round hole. None of the four choices presented on DTV channel election Form 381 upon which the DTV Table is based fit WSTE-TV's situation. Because the form could not be filed without checking one of the four choices, Siete Grande checked box "C" but attached an Addendum that explained WSTE-TV's unique operating parameters. The Addendum sought recognition of its long stated goal to replicate in DTV the island-wide coverage of its analog station. WSTE-TV selected and was tentatively allocated the channel it requested, Channel 7, as its post-transition permanent DTV channel. The operating parameters assigned to the allocated channel will not permit WSTE-TV to replicate its island wide coverage. While the Commission's

staff itself acknowledged that the Form 381's choices did not address WSTE-TV's unique situation, in the summer of 2006 WSTE-TV was advised that the Addendum was not taken into account in fashioning the final DTV Table and that WSTE-TV's existing service area would be substantially reduced in post DTV transition. Siete Grande was therefore encouraged to file Comments in this proceeding in order to correct the Table and avoid such a devastating and drastic cutback in service area. The cutback in service involves over 2.5 million island-wide residents or nearly 80% of the island's population and would be without precedent, contrary to the public interest and at cross purposes to the stated goal of the DTV transition of full replication of existing coverage. As will be shown in the parts that follow, the final DTV Table can be corrected without any adverse impact to any other licensee. Because Siete Grande's situation is so unique, waivers of the channel election guidelines and replication deadlines may be required to implement the changes proposed. We request the Commission take cognizance of the special circumstances of WSTE-TV's unique multi-site antenna system and the public interest goal of preserving existing service to 2.5 million people in doing so.¹

4. In the parts that follow, Siete Grande will set forth the history and background of WSTE-TV's unique unitary analog system (Part II), Siete Grande's repeated attempts to achieve island-wide DTV replication of its existing analog

¹ It is well settled that the Commission has discretion to waive a rule where "particular facts would make strict compliance with the rule inconsistent with the public interest" and "special circumstances warrant a deviation from the general rule." See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

service (Part III), the failure of the Commission to take cognizance of the Addendum to the Channel 381 election form (Part IV), and the proposed correction to the DTV table which would alleviate the replication anomaly and prevent an enormous service loss (Part V).

II.

History and Description of Siete Grande's Unitary Analog System

5. Although Siete Grande has previously set out this background in other proceedings, it bears repeating to underline the uniqueness of WSTE's situation and the effort Siete Grande has put into making the transition to DTV a successful one. In 1985, a WSTE-TV predecessor licensee sought authority to construct an experimental broadcast facility utilizing widely spaced transmitters with circularly polarized antennas at low elevations in front of mountain peaks, all operating simultaneously on the same frequency. The intent of the experimental operation was to enable Station WSTE-TV to bring an independent, local service to large areas of the island previously unable to receive WSTE-TV's signal because of terrain factors. The Commission, in authorizing experimental operation concluded that the experiment would provide information useful to an evaluation of methods of overcoming terrain obstructions, and would provide a viewable signal to areas within the Station's licensed contours previously unable to receive the signal from a single transmitter. The multi-transmission system was specifically developed because Puerto Rico's intervening mountains and terrain barriers precluded the

signal from the Station's main transmitter from reaching, or even approaching, most of the populated areas on the island of Puerto Rico which are within the Station's authorized coverage contour. WSTE-TV believed that a system of simultaneously transmitting co-channel transmitters could provide greater service to the inhabitants within the authorized footprint of the Station's license than would be possible from a single transmission site which would provide primary coverage to Ponce but be shielded by mountains from most of the rest of the island. The Commission authorized WSTE-TV to construct and test on an experimental basis this unique system – a system that to this day in analog technologies has not been replicated in Puerto Rico, the mainland or elsewhere. Ponce Television Corporation, 1 FCC Rcd. 1167 (1986), recon. denied 2 FCC Rcd. 5878 (1987). See also Channel 7, Inc., 4 FCC Rcd. 5258 (1989). The same limitation that impeded island-wide analog signal coverage from a single transmitter in 1985 applies with equal force to DTV transmission today.

6. WSTE-TV constructed and tested its multi-site analog facility, investing millions of dollars at great financial risk into a process that succeeded in establishing an independent island-wide signal—one of just four commercial television stations that cover the island of Puerto Rico. Significantly, the other stations do not cover the island from one transmitter either. Instead they have obtained satellite waivers or utilize affiliated stations to achieve island-wide coverage. On August 20, 1992, the Commission, after an exhaustive review of thousands of measurements, granted Siete Grande a permanent license to operate

the multi-site facility including Siete Grande's request for waiver of the Commission's rules to enable the booster stations to operate with higher than the maximum power permitted for booster stations. The coverage results of the experiment were impressive. See Siete Grande Television, Inc., 7 FCC Rcd. 5299 (1992). In granting the license to operate this integrated multi-transmission facility, the Commission pointedly observed (Siete Grande, supra)

"We believe that the mountainous terrain of Puerto Rico supports use of alternative methods to extend broadcast television service to as many people as possible. *See also, Channel 7, Puerto Rico*, 58 FCC 2d 1148 at 1151 (1975). The combination of the island's topography and its geographic isolation, places Puerto Rico in a highly unusual position. Its geography significantly obstructs local broadcast signals, and, because of its isolation, it does not receive any broadcast signals from off the island. Nevertheless, that isolation allows broadcasters, such as Siete Grande, the flexibility to utilize innovative means to improve actual coverage without risking cochannel or adjacent-channel interference to others.

"Based on the evidence presented, we find that grant of Siete Grande's applications will serve the public interest. Analysis of the data submitted by Siete Grande in conjunction with the experiment confirms that the four transmitters greatly improve actual reception of channel 7 throughout the island, allowing improved service to approximately 1.3 million people. Grant of the applications will not extend the station's coverage beyond the area which the applicant is already licensed to serve; indeed, grant of the applications will allow Siete Grande substantially to enhance its service to those whom it is already licensed to serve. In addition, operation of the facilities will cause no interference to any cochannel or adjacent-channel station, nor will it preclude the establishment of any new facility which was not already precluded by the currently authorized channel 7 facility."

"...the combination of the island's topography and its geographic isolation places Puerto Rico in a highly

unusual position. The island's topography significantly obstructs local broadcast signals, and limits the ability of television stations in San Juan to provide service to portions of the island for which service would ordinarily be received. Therefore, in order for San Juan stations to reach audiences in the outer portions of the island, they must rely on some type of ownership/overlap combination or alternative engineering solution[s]."

7. Achieving island-wide coverage through means of the multi-site transmission facility has enabled WSTE-TV to provide emergency information and coverage in times of national disasters and hurricanes that routinely unleash nature's destructive forces upon the island. Over the years, the need for such communication facilities has been attested to by the Governor, the Commonwealth Resident Commissioner and Member of Congress, mayors of major cities including San Juan and the community of license, Ponce, and the Civil Defense Administration as television communication remains the most important and efficient vehicle for information distribution to population areas that are cut off from other forms of mass communication.² The importance of WSTE-TV's coverage capability is heightened further in this precarious time of homeland security, terrorism and national defense.

² See *Request for Immediate Action*, filed by Siete Grande Television, Inc., dated February 21, 1992, on File No. BPCT-900531KE and *Reply Comments* of Siete Grande Television, Inc., dated January 24, 2003 in DA 02-3383.

III.

WSTE-TV'S Attempts to Achieve DTV Service Area Replication

8. The four multi-site transmission facilities broadcast as a single system on Channel 7 even though they operate from a separate auxiliary transmitter site in Ponce and three booster locations in San Juan, Mayagues and Arecibo. This integrated system of synchronous co-channel signals has been operating successfully as a single unitary system on a stable continuing basis since 1986, and has neither caused nor received interference from any television facility during its two decade period of operation. The booster facilities do not expand the Station's coverage area beyond its predicted Grade B contour. Rather, the boosters enable WSTE-TV to provide service to those areas within the Grade B contour that could not otherwise receive service from a single transmitter location alone. Most significantly, although the Commission licensed three of the transmitters as boosters, which as secondary stations would not be entitled to protection, in terms of the Station's analog facilities, full service protection was afforded to Channel 7 by reason of the surrounding water and the primary status of the Station's main transmitter license across the island. In short, the distributed transmission system delivering the analog signal—even though through boosters—had de facto primary status since its land coverage was fully contained within WSTE-TV's predicted contour across the island and was not subject to preemption by higher classed primary stations. Deploying a similar distributed transmission system ("DTS") for DTV operations should receive primary status protection to achieve permanence of

the service as well and to ensure full and continuous replication of WSTE-TV's existing analog signal.

9. The grant of WSTE-TV's license predated the development of the Commission's DTV rules. In the FCC's *Sixth Report and Order* the proposed DTV Allocation Table failed to address full signal replication of Channel 7's island-wide coverage area achieved through use of the booster facilities. Siete Grande was assigned a single DTV channel allotment on Channel 66 at its main transmitter site in Ponce. Significantly, the footprint of the Channel 66 allocation covered the entire island, even though island-wide service could no more readily be achieved in DTV from a single transmitter site than on analog absent the deployment of boosters or some other type of DTS service.

10. Siete Grande petitioned the Commission to partially reconsider the *Sixth Report and Order* by taking into account digital service area replication in the context of WSTE-TV's unique licensed facilities including its auxiliary main and three booster stations. Siete Grande observed that obtaining and building out the analog experimental and permanent authorizations required a multi-million dollar risk. The costs included engineering and permits, construction of towers, purchase of transmitters and the construction of an intricate microwave system to connect the various boosters. Having taken this risk to provide island wide analog service, it would be a cruel twist of fate for the Commission to change its rules to provide for DTV service and then render the entire investment worthless if DTV signal replication of the analog contour cannot be achieved. From a public interest

standpoint, some two and one-half million of Puerto Rico's inhabitants would lose over the air reception of Channel 7 if a vehicle is not found to deliver the WSTE-DT signal island wide. Fortunately, a simple solution exists and its implementation will not interfere with any other licensee.

11. In its *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24, released February 23, 1998 ("Reconsideration Order"), the Commission recognized that "the mountainous terrain characteristics of ... Puerto Rico does provide some terrain shielding of television signals." The Commission added "...we believe that these terrain characteristics should permit broadcasters such as SGI [Siete Grande] to implement future booster stations if desired. We believe that coverage enhancements through the use of secondary low power stations are best addressed through local engineering solutions rather than as part of the DTV allotment process."³

12. Siete Grande followed this instruction with years of effort and further expense. In 1999 Siete Grande filed an application for DTV authorization, requesting a waiver to establish synchronous DTV facilities at its booster sites in order to replicate its existing analog signal and preserve its independent island-wide service. The Commission did not act on the waiver request.

13. In February, 2002, Siete Grande filed an application for a single unitary license to cover all of its multi-site analog facilities. Such license would have conferred primary station status upon the booster sites by looking beyond the

³ *Reconsideration Order* ¶ 355.

component parts of the signal and treating the entire integrated synchronous co-channel operation as one single array, which, in effect, it is. The unitary license would have enabled Siete Grande to receive protected status as a primary station at each location. Its purpose was to enable Siete Grande to replicate its island-wide service with DTV facilities in precisely the same way it provides island-wide analog coverage to its viewers now. The public interest benefits of being able to perpetuate this island-wide coverage for over twenty years have been attested to by numerous public officials. Moreover, Siete Grande submitted a detailed preclusion study which demonstrated that conferring such primary status would not preclude any core or out of the core stations from finding frequencies of their own were the Commission to permit DTV operation at Siete Grande's booster locations.

14. On December 10, 2002, the Commission placed Siete Grande's unitary license application on a special public notice to solicit comments from interested parties as to the public interest ramifications of making such a grant. No party opposed the grant and no party in Puerto Rico commented upon the preclusion study or challenged its findings. Two parties, without opposing the merits of the Application, suggested that the Commission defer action on the proposal and instead conduct a rulemaking inquiry into the general benefits of unitary licenses. Shortly after the comment period expired, the Commission released its *Second Periodic Review*. On March 28, 2003, the Commission declined to address the issues raised by Siete Grande's unitary license application, reasoning that "These very issues are being explored by the Commission in a pending rulemaking

proceeding.” [and] “to do so could be seen as prejudging the rulemaking.” See *Letter to Stuart Shorenstein*, dated March 28, 2003, DA 02-3383, p. 2.

15. Siete Grande then participated in the *Second Periodic Review DTV Rulemaking Proceeding* (MB 03-15), and the Commission, in its Order, pointed to DTS technologies as a solution for stations such as WSTE-TV to achieve DTV coverage replication. At this moment, the Commission has not made its interim DTS rules permanent and has not addressed deployment of DTV boosters. Moreover, the deployment of a DTS type system on interim DTV Channel 8 is not an effective solution since Channel 8 must also protect Channel 9 from interference. Thus, Siete Grande proposed to flash cut to its permanent DTV operations on Channel 7 which can deploy DTS type technology to replicate existing WSTE-TV’s island wide service. Twenty years ago the Commission gave special consideration to these same coverage challenges to enable Siete Grande to adopt a booster-like solution to meet its analog coverage needs. Given the approaching DTV transition deadline, a similar solution needs to be adopted expeditiously to provide island wide DTV service or service to 82% of the population currently receiving WSTE-TV’s analog service will be lost, perhaps permanently.

16. Siete Grande was awarded a construction permit for DTV operations on Channel 66 on September 30, 2003. Shortly thereafter Siete Grande learned that the overlandlord of its auxiliary transmitter site was terminating its lease and it would have to move the transmitter location of its analog auxiliary transmitter, which is the centerpiece of its four-site island-wide array. Realizing that it would

ultimately have to move to an in core DTV channel, and in order to protect the island-wide signal coverage of Channel 7, which it would ultimately select as its permanent DTV channel, Siete Grande initiated a rulemaking proceeding to change its DTV channel from Channel 66 to Channel 8. Siete Grande viewed this as an interim step, as its quest had always been to replicate the island-wide footprint of both Channels 7 and 66 on DTV Channel 7. The Commission adopted a Notice of Proposed Rulemaking and adopted the channel change in June 2004. On August 31, 2004, Siete Grande filed an application for DTV operation on Channel 8 in Ponce. The application noted Siete Grande's intention to file future DTV booster applications to achieve island-wide coverage. On October 7, 2004, the Commission released its Channel Election Notification Form which had to be filed by November 5, 2004. The table attached to the October 7, 2004, Notice specified an island wide DTV coverage area for WSTE-TV. It turned out that in preparing the application for Channel 8, the specified coverage area had to be limited both to protect against interference to Channel 9 and because booster applications were not being accepted by the Commission. The coverage area of interim DTV Channel 8 was limited to the southern portion of the island in much the same way the coverage of WSTE-TV's analog auxiliary license is limited by mountainous terrain. The Channel 8 Construction Permit Application was granted on November 2, 2004, just three days before Siete Grande filed its DTV channel election Form 381 on November 5, 2004. Siete Grande elected Channel 7 as its ultimate DTV channel so that it could avoid the interference limitations imposed on Channel 8 and be in position to preserve

island-wide coverage to Puerto Rico's 3.3 million inhabitants through use of a future multi-site transmission array.

IV.

In Selecting Siete Grande's Permanent DTV Channel

The Commission Failed to Consider Siete Grande's Addendum to Form 381

17. As noted in the Seventh Notice, the Commission took into account the requests filed by licensees on Form 381 in preparing the final table of DTV Assignments. However, the operating parameters set forth on the table wholly ignored the Addendum which Siete Grande filed to its Form 381 election - an Addendum that was necessary because none of the four choices fit the unique circumstances presented by Siete Grande's operations.

18. Specifically, Selection (a) asked the licensee to certify "that it will operate its post-transition DTV station at maximized facilities, as authorized by license or construction permit." This was not satisfactory because the construction permit for the community of license placed a predicted service contour over only the southern half of the island. This choice would not have preserved Siete Grande's island-wide coverage.

19. Selection (b) asked the licensee to certify "that it will operate...pursuant to a pending DTV application for maximization facilities that has not been authorized because of a pending international coordination." This choice was not applicable to Siete Grande.

20. Selection (d) asked the licensee to certify "that it does not have a DTV channel allotment, and will operate, its post transition DTV station based on its currently authorized NTSC license or construction permit." This choice was also not applicable.

21. Consequently, Siete Grande chose selection (c), which asked the licensee to certify "that it will operate...based on its allotted replication facilities." There was no question that asked if Siete Grande wished to replicate its analog coverage area post transition, which has been the express desire of Siete Grande throughout the DTV allotment process. Since the DTV Channel 66 allotment provided an island-wide footprint and Siete Grande's ultimate post-transition operation on Channel 7 would enable island-wide coverage to be replicated in much the same way WSTE-TV operates in analog, Siete Grande sought through the Addendum to Form 381 to clarify what it meant by replication facilities so that it would not be caught in a trap created by a construction permit for more limited operations approved just three days before.

22. The Addendum enumerated Siete Grande's goals as follows:

"The technical information in the FCC's database with respect to WSTE is correct. However, such information does not fully describe the facilities that Siete Grande will seek to utilize for DTV operations in the future. Specifically, this exhibit provides additional information concerning the digital television migration strategy to be pursued by WSTE, Channel 7 NTSC and Channel 8 DTV in Puerto Rico. It is requested that this information be associated with the Form 381 submitted by Siete Grande, in order to more fully explain the unique requirements with respect to WSTE's island-wide multiple-site transmitting system."

The Addendum continued:

“WSTE holds a construction permit to build its DTV facilities on Channel 8 (FCC File #BMPCDT-20040831AAO) from a site near its current Channel 7 auxiliary site. In its FCC Form 381, Siete Grande has chosen to certify that it will operate its post-transition DTV station based on its **replication facilities**⁴, which, according to the FCC contour method, covers virtually the entire island of Puerto Rico. The reason for this request is that the WSTE-DT coverage over Puerto Rico provided by the construction permit is limited for precisely the same reason that the booster system is necessary, mainly the anomalous terrain on the island. None of the alternatives presented in Form 381, Section II, Question 1 fully explains the unique characteristics of WSTE’s coverage.”

The Addendum restated Siete Grande’s “goal of achieving island-wide DTV coverage that will replicate existing “coverage” through use of its booster facilities and attached a coverage map which demonstrated that island-wide services could be replicated through the use of the booster stations. Significantly, the proposed final DTV table allots Channel 7 to Siete Grande and this channel allotment need not be

⁴ The original FCC-allotted replication facilities for WSTE was for out-of-core Channel 66. Siete Grande has since obtained authorization to build DTV facilities on Channel 8. As late as January 2006, Siete Grande’s engineers were advised by the Commission that WSTE-TV would be assigned Channel 7 with operating parameters that would enable full replication of its analog island-wide coverage. In February 2006, Siete Grande filed Comments in the Commission’s Digital Transmission Rulemaking Proceeding (File MB 05-312) in which it referenced its island-wide assignment, and in June 2006, Siete Grande prepared a series of applications whereby it proposed to establish a multi-site array similar to its analog transmission array and discussed with the Commission’s staff its filing a series of applications and waiver requests for DTV booster operations. The staff advised that it could not accept the booster applications at that time. It was at that meeting that Siete Grande learned that the Addendum it had prepared to Form 381 was not taken into consideration in fashioning the DTV Table even though, as was acknowledged by the staff, none of the Form 381 elections fit Siete Grande.

changed other than to revise the operating parameters set forth on the table. Such a change will not cause any other allotment in the table to change and will not cause interference to any other station on the island.

23. As a consequence, unless remedied herein, Siete Grande's post-transition DTV service will be seriously curtailed and over 2.5 million viewers, or more than 80% of its population coverage, will lose an existing service. The Commission can use its equitable powers under the public interest standard to avoid such a dire result, especially since it can be remedied in this anomalous circumstance without adverse impact to any other television licensee. To the extent a waiver is required to the Commission's allotment procedures to achieve a solution that advances the stated purpose of achieving full DTV replication of the existing analog service area, the Commission should not disenfranchise millions of viewers and instead should act to honor the public's interest in preserving that service. Because of the uniqueness of Siete Grande's operation, granting such relief to Siete Grande will not create a floodgate of similar requests.

V.

A Change in the Table of Allotments for WSTE-DT

Will Serve the Public Interest and Have No Adverse Impact

24. Ironically, had Siete Grande not timely filed the Form 381 election it might have joined the forty-one stations that did not do so and possibly would have avoided the anomalous situation presented today. Nonetheless, the Commission in its Seventh Notice acknowledged, "we may grant waivers on a case by case basis in

response to requests for alternative channel assignments” (*Seventh Notice*, par. 27). The Commission has invited comments on “whether the channel assignments in the proposed DTV table will serve the Commission’s goals or promoting overall spectrum efficiency and ensuring the best possible DTV service to the public” (*Seventh Notice*, par. 16). With regard to Siete Grande, this is clearly not the result.

25. More than \$25 million has been invested in WSTE-TV in establishing an innovative means of overcoming Puerto Rico’s mountainous terrain in order to provide a stable island-wide service. Siete Grande has the technical capacity to replicate that service on the DTV spectrum. Thus, while the Commission “believe(s) our proposed new DTV table recognizes industry expectations by protecting existing service and respecting investments already made...” the proposed table accomplishes neither with respect to WSTE-TV.

26. As a solution, Siete Grande urges the Commission to substitute the service parameters for DTV operation on Channel 7 set forth in Attachment A for those found in the proposed DTV table. The new parameters will cast a footprint over the island and closely mirror the parameters for WSTE-TV’s existing service by removing the artificial limitations imposed by the Channel 8 construction permit that was granted just three days prior to the channel election date. Upon the adoption of the requested change in the table it is Siete Grande’s plan to immediately file a DTV construction permit application for post transition operation on its existing analog Channel 7 and to seek authority to specify DTV booster or

other DTS type co-channel operations at its existing transmitter sites so that it can flash cut operations prior to the DTV transition deadline set by Congress for February 2009. Unless action by the Commission in making the requested change to the DTV Table is taken immediately, Siete Grande will become ensnared in the slow pace of construction and permit approval in Puerto Rico and the goal of continuing island-wide service without interruption on the transition date will be greatly jeopardized.

27. The proposed changes are fully consistent with the stated goals of the DTV transition and will preserve service to over two and one-half million residents who otherwise will experience a total service loss. Significantly, these goals can be satisfied and the service loss avoided without adverse impact upon or change to any other channel assignment in the Table and without any preclusionary impact.

28. Over the years Siete Grande has met time and again with the Commission's staff to present innovative ways to preserve its existing coverage within the current regulatory framework. At each stage the goal of full replication has been supported but the mechanism for achieving that goal has had to await the completion of yet another Commission proceeding. The Seventh Notice is the final step in the process, so if a solution that is technically feasible to prevent what is probably the single largest service loss in the Table is to be implemented, the time to do so is now.

29. At enormous expense, island-wide service was established some twenty years ago. There are only four commercial broadcast stations in Puerto Rico that

provide island-wide service. Since less than half of Puerto Rico's residents subscribe to cable or satellite service, off the air reception is all the more important on an island that is frequently battered by torrential weather and other natural disasters. After decades of using technological innovation to become a free-standing island wide station, the spider's web of the Commission's rules should not be interpreted to relegate Channel 7 to a Ponce area station only, as to do so will doom its future. Every other commercial station licensed to Ponce has had to affiliate with or seek a waiver to become a satellite of a larger Puerto Rican station. WSTE-TV's independence as an island-wide provider of services can only be maintained if the Commission takes the actions requested herein. See *In re Applications of Paxon Communications of San Juan, Inc. (Transferor) and Lin Television Corporation (Transferee)*, FCC 01-207, released July 20, 2001.⁵

30. Accordingly, Siete Grande requests:

⁵ "Service by television stations on the island is constrained by mountainous terrain which limits over-the-air coverage. Furthermore, there are generally poor economic conditions in the population centers beyond San Juan. This makes it difficult for entities to maintain full service stations in areas other than San Juan. Nevertheless, LIN contends, advertisers, when purchasing time on full service Puerto Rico television stations, expect that their message will reach all of the island's population centers. Because no single television station can reach the entire island, station owners have developed the practice of owning a single powerful, full service television in the population center of San Juan, and operating satellite stations or entering into rebroadcast agreements with stations in the remaining areas of the island. LIN argues that Ponce is one of the poorer areas of Puerto Rico that cannot sustain a stand alone full-service television station. We have recognized this fact in prior decisions granting satellite status to Ponce television stations." Citing *Canal 48, Inc.*, 89 FCC Rcd 2193, 2194 (1993); and *Seglares Iglesia Catolica, Inc.*, 2 FCC Rcd 7539 (1987).

1. The Commission substitute in its proposed Final DTV Table the parameters for Channel 7, Ponce, Puerto Rico, presented in Attachment A hereto;
2. The Commission take action expeditiously so that island-wide service can be continued without interruption on the transition date;
3. The Commission authorize Siete Grande to file DTV booster applications at its three existing booster sites so as to produce a single multi-transmission site synchronous array that will provide island-wide service; and
4. The Commission waive its DTV election rules and replication deadlines to grant the coverage replication requested herein.

Respectfully submitted,

SIETE GRANDE TELEVISION, INC.



By: _____

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